PLEASE READ THE FOLLOWING LICENSE AGREEMENT TERMS AND CONDITIONS CAREFULLY BEFORE DOWNLOADING OR USING THE APPLE SOFTWARE. THESE TERMS AND CONDITIONS CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU AND APPLE.

iPhone Developer Program License Agreement

Purpose

You would like to use the Apple Software (as defined below) to develop one or more Applications (as defined below) for the iPhone and iPod touch and to distribute Your Applications exclusively through the iTunes Store. Apple is willing to grant You a limited license to use the Apple Software to develop and test Your Applications on the terms and conditions set forth in this Agreement.

Applications that meet Apple's Documentation and Program Requirements may be submitted for consideration by Apple for distribution. If selected by Apple, Your Applications will be digitally signed by Apple and distributed exclusively through the iTunes Store. Distribution of free (no charge) Applications will be subject to the distribution terms contained in Schedule 1 to this Agreement. Distribution of paid (fee charged) Applications shall be subject to Apple's distribution terms contained in a separate agreement between You and Apple.

1.   Accepting this Agreement; Definitions

1.1   Acceptance

In order to use the Apple Software, You must first agree to this License Agreement. If You do not or cannot agree to this License Agreement, You are not permitted to use the Apple Software. Do not download or use the Apple Software in that case.

You accept and agree to the terms of this License Agreement on Your own behalf and/or on behalf of Your company as its authorized legal representative, by doing either of the following:
(a) checking the box displayed at the end of this Agreement if You are reading this on an Apple website; or
(b) clicking an "Agree" or similar button, where this option is provided by Apple.

1.2   Definitions

Whenever capitalized in this Agreement:

"Agreement" means this iPhone Developer Program License Agreement, including Schedule 1 which is hereby incorporated by this reference.

"Apple" means Apple Inc., a California corporation with its principal place of business at One Infinite Loop, Cupertino, California 95014, U.S.A.

"Apple Software" collectively means the SDK and Provisioning Modules.

"Apple Subsidiary" means a corporation at least fifty percent (50%) of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are owned or controlled, directly or indirectly, by Apple, and that is involved in the operation of or otherwise affiliated with the iTunes Store, including without limitation Apple Pty Limited, iTunes S. à.r.l., and iTunes K.K.

"Application" means one or more software programs developed by You in compliance with the Documentation and the Program Requirements, under Your own trademark or brand, and for specific use with the Apple iPhone and/or the Apple iPod touch, including bug fixes, updates, upgrades, modifications, enhancements, supplements to, revisions, new releases and new versions of such software programs.

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"Authorized Test Devices" means iPhone or iPod touch devices owned by You that have been designated by You for testing purposes under this Program and specifically registered with Apple for that purpose.

"Authorized Users" means Your employees and contractors who (a) each have an active and valid Registered iPhone Developer account with Apple, (b) have a demonstrable need to know or use the Apple Software in order to develop and test Applications, and (c) have written and binding agreements with You to protect the unauthorized use and disclosure of third party confidential information such as the Apple Software and other Apple Confidential Information.

"Documentation" means any technical or other specifications or documentation that Apple may make available or provide to You relating to or for use in connection with the Apple Software.

"FOSS" (Free and Open Source Software) means any software that is subject to terms that, as a condition of use, copying, modification or redistribution, require such software and derivative works thereof to be disclosed or distributed in source code form, to be licensed for the purpose of making derivatives works, or to be redistributed free of charge, including without limitation software distributed under the GNU General Public License or GNU Lesser/Library GPL.

"iTunes Store" means an electronic store and its storefronts branded, and owned and/or controlled by Apple or an affiliate of Apple.

"Licensed Application" means an Application that (a) meets and complies with all of the Documentation and Program Requirements, and (b) has been selected and digitally signed by Apple for production distribution.

"Licensed Application Information" means screen shots, images, artwork, icons and/or any other copyrighted text or information relating to a Licensed Application that You provide to Apple for use in accordance with Schedule 1.

"Program" means the overall iPhone and iPod touch application development, testing, digital signing, and distribution program contemplated in or by this Agreement.

"Program Requirements" mean the technical, human interface, design, product category, security, performance, and other criteria and requirements specified by Apple, including but not limited to the current set of requirements set forth in Section 3.3, as they may be modified from time to time by Apple in accordance with this Agreement.

"Provisioning Modules" means (a) the pre-release iPhone operating system software and (b) the provisioning profile(s) provided by Apple for use by You in connection with Your Application development and testing, and includes any Updates that may be provided by Apple.

"Published API(s)" means the public and documented Application Programming Interface(s) contained in the Apple Software.

"Security Solution" means the proprietary Apple content protection system marketed as Fairplay, to be applied to Licensed Applications distributed on the iTunes Store to administer Apple's standard usage rules for Licensed Applications, as such system and rules may be modified by Apple from time to time.

"SDK" (Software Development Kit) means the Documentation, software (source code and object code), applications, sample code, simulator, tools, libraries, APIs, data, files, and materials provided or made available by Apple for use by You in connection with Your Application development, and includes any Updates that may be provided or made available by Apple.

"Term" means the period described in Section 12.

"Updates" means bug fixes, updates, upgrades, modifications, enhancements, supplements, and new releases or versions of the Apple Software, or to any part of the Apple Software.

"You", "Your" and "Licensee" means and refers to the person(s) or legal entity using the Apple Software or otherwise exercising rights under this Agreement. If You are entering into this Agreement on behalf of Your company, "You" or "Your" refers to your company as well.

2.   Internal Use License and Restrictions

2.1   Permitted Uses and Restrictions
Subject to the terms and conditions of this Agreement, Apple hereby grants You during the Term, a limited, non-exclusive, personal, revocable, non-sublicensable and non-transferable license to:

(a) Install a reasonable number of copies of the SDK portion of the Apple Software on Apple-labeled computers owned or controlled by You, to be used internally by You or Your Authorized Users for the sole purpose of developing or testing Applications;

(b) Make and distribute a reasonable number of copies of the Documentation to Authorized Users for their internal use only and for the sole purpose of developing or testing Applications; and

(c) Install one (1) copy of the Provisioning Modules on each of Your Authorized Test Devices, up to the number of Authorized Test Devices that You have acquired licenses for, to be used internally by You or Your Authorized Users for the sole purpose of testing Your Applications.

2.2   Authorized Test Devices
As long as an Authorized Test Device contains any part of the Provisioning Modules, You agree to restrict access to such Authorized Test Device to Your Authorized Users and to not disclose, show, rent, lease, lend, sell or otherwise transfer such Authorized Test Device to any third party. You further agree to take reasonable precautions to safeguard, and to instruct Your Authorized Users to safeguard, all Authorized Test Devices from loss or theft.

You acknowledge that by installing the Apple Software on Your Authorized Test Devices, these Devices may be "locked" into testing mode and may not be restored to their original condition. Apple shall not be responsible for any costs, expenses or other liabilities You may incur as a result of provisioning Your Authorized Test Devices, Your Application development or the installation or use of this Apple Software, including but not limited to any damage to any equipment, software or data.

2.3   Confidential and Pre-Release Nature of Apple Software
The Apple Software is Apple Confidential Information and subject to the confidentiality obligations of this Agreement. The Apple Software is pre-release software and should not be relied upon to perform in the same manner as a final-release commercial-grade product, nor should it be used with data that is not sufficiently and regularly backed up.

2.4   Copies
You agree to retain and reproduce in full the Apple copyright, disclaimers and other proprietary notices (as they appear in the Apple Software and Documentation provided) in all copies of the Apple Software and Documentation that you are permitted to make under this Agreement.

2.5   Ownership
Apple retains all rights, title, and interest in and to the Apple Software and any Updates it may make available to You under this Agreement. You agree to cooperate with Apple to maintain Apple's ownership of the Apple Software, and You agree to promptly provide notice of any claims relating to the Apple Software.

2.6   No Other Permitted Uses

You agree not to rent, lease, lend, upload to or host on any website or server, sell, redistribute, or sublicense the Apple Software, in whole or in part, or to enable others to do so. You may not use the Apple Software for any purpose not expressly permitted by this Agreement. You agree not to install, use or run the SDK on any non-Apple-labeled computer, not to install, use or run the Provisioning Modules on devices other than Authorized Test Devices, or to enable others to do so. You may not and You agree not to, or to enable others to, copy (except as expressly permitted under this Agreement), decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, decrypt, or create derivative works of the Apple Software or any services provided by the Apple Software, or any part thereof (except as and only to the extent any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by licensing terms governing use of open-sourced components included with the Apple Software). You agree not to exploit any services provided by the Apple Software in any unauthorized way whatsoever, including but not limited to, by trespass or burdening network capacity. Any attempt to do so is a violation of the rights of Apple and its licensors of the Apple Software or services provided by the Apple Software. If You breach any of the foregoing restrictions, You may be subject to prosecution and damages. All licenses not expressly granted in this Agreement are reserved and no other licenses, immunity or rights, express or implied are granted by Apple, by implication, estoppel, or otherwise.

2.7   Updates; No Support or Maintenance

Apple may extend, enhance, or otherwise modify the Apple Software at any time without notice, but Apple shall not be obligated to provide You with any Updates to the Apple Software. If Updates are made available by Apple, the terms of this Agreement will govern such Updates, unless the Update is accompanied by a separate license in which case the terms of that license will govern. Apple is not obligated to provide any maintenance, technical or other support for the Apple Software. You acknowledge that Apple has no express or implied obligation to announce or make available a commercial version of the Apple Software to anyone in the future. Should an Update or a commercial version be made available, it may have APIs, features, services or functionality that are different from those found in the Apple Software licensed hereunder.

3.   Your Obligations

3.1   General

You certify to Apple and agree that:

(a) You are of the legal age of majority in the jurisdiction in which You reside (at least 18 years of age in many countries) and have the right and authority to enter into this Agreement on Your own behalf, or if You are entering into this Agreement on behalf of Your company or organization, that You have the right and authority to legally bind Your company or organization to the terms and obligations of this Agreement;

(b) All information provided to Apple by You will be current, true, accurate and complete;

(c) You will comply with the terms of and fulfill Your obligations under this Agreement and You agree to monitor and be responsible for Your Authorized Users' use of the Apple Software and Authorized Test Devices and their compliance with the terms of this Agreement; and

(d) You will be solely responsible for all costs, expenses, losses and liabilities incurred, and activities undertaken by You and Authorized Users in connection with the Apple Software, the Authorized Test Devices, Your Applications and Your related development efforts;

(e) For the purposes of Schedule 1(if applicable), You represent and warrant that You own or control the necessary rights in order to appoint Apple and Apple Subsidiaries as your exclusive worldwide agent for the delivery of Your Licensed Applications, and that the fulfillment of such appointment by Apple and Apple Subsidiaries shall not violate or infringe the rights of any third party; and

(f) You will not act in any manner which conflicts or interferes with any existing commitment or obligation You may have and that no agreement previously entered into by You will interfere with Your performance of Your obligations under this Agreement.

3.2   Use of the Apple Software

As a condition to using the Apple Software, You agree that:

(a) You will only use the Apple Software for the purposes and in the manner expressly permitted by this Agreement and in accordance with all applicable laws and regulations;

(b) You will not use the Apple Software for any unlawful or illegal activity, nor to develop any Application which would commit or facilitate the commission of a crime, or other tortious, unlawful or illegal act;

(c) Your Application will be developed in compliance with the Documentation and the Program Requirements, the current set of which is set forth in Section 3.3 below;

(d) To the best of Your knowledge and belief, Your Application and Licensed Application Information does not and will not violate, misappropriate, or infringe any copyright, patent, trademark, trade secret, rights of privacy and publicity, or other proprietary or legal right of any third party or of Apple;

(e) You will not, through use of the Apple Software or otherwise, create any Application or other program that would disable, hack or otherwise interfere with the Security Solution, or any security, digital signing, digital rights management, verification or authentication mechanisms implemented in or by the iPhone operating system software, iPod touch operating system software, this Apple Software, or other Apple software or technology, or enable others to do so; and

(f) Applications developed using the Apple Software may only be distributed if selected by Apple for exclusive distribution via the iTunes Store and Apple may, in its sole discretion, reject any Application for such distribution.

3.3   Program Requirements for Applications

Any Application developed using this Apple Software must meet all of the following criteria and requirements, as they may be modified by Apple from time to time:

APIs and Functionality:

3.3.1   Applications may only use Published APIs in the manner prescribed by Apple and must not use or call any unpublished or private APIs.

3.3.2   An Application may not itself install or launch other executable code by any means, including without limitation through the use of a plug-in architecture, calling other frameworks, other APIs or otherwise. No interpreted code may be downloaded and used in an Application except for code that is interpreted and run by Apple's Published APIs and built-in interpreter(s).

3.3.3   Without Apple's prior written approval, an Application may not provide, unlock or enable additional features or functionality through distribution mechanisms other than the iTunes Store.

3.3.4   An Application may write data on a device only to the Application's designated container area, except as otherwise specified by Apple.

User Interface and Data:

3.3.5   Applications must comply with the Human Interface Guidelines and other Documentation provided by Apple.

3.3.6   Any form of user or device data collection, or image, picture or voice capture or recording performed by the Application (collectively "Recordings"), and any form of user data, content or information uploading, syncing, or transmission performed by the Application (collectively "Transmissions") must comply with all applicable privacy laws and regulations as well as any Apple program requirements related to such aspects, including but not limited to any notice or consent requirements. In particular, a reasonably conspicuous visual indicator must be displayed to the user as part of the Application to indicate that a Recording is taking place.

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Location Services:

3.3.7   For Applications that use location-based APIs:

- You and the Application must comply with all applicable privacy and data collection laws and regulations with respect to any collection, transmission, maintenance, processing, use, etc. of the user's location data by the Application.

- Applications may not be designed or marketed for the purpose of harassing, abusing, stalking, threatening or otherwise violating the legal rights (such as the rights of privacy and publicity) of others.

- Applications may not be designed or marketed for real time route guidance; automatic or autonomous control of vehicles, aircraft, or other mechanical devices; dispatch or fleet management; or emergency or life-saving purposes.

- Applications may not use any robot, spider, site search or other retrieval application or device to scrape, retrieve or index services provided by Apple or its licensors, or to collect information about users for any unauthorized purpose.

3.3.8   Applications that offer location-based services or functionality must notify and obtain consent from an individual when his or her location data is being collected, transmitted or otherwise used by the Application.

3.3.9   Applications must not disable, override or otherwise interfere with any Apple-implemented system alerts, warnings, display panels, consent panels and the like intended to notify the user that the user's location data is being collected, transmitted, maintained, processed or used, or intended to obtain consent for such use. If consent is withheld, Applications may not collect, transmit, maintain, process or utilize the user's location data.

Content and Materials:

3.3.10   Any master recordings and musical compositions embodied in Your Application must be wholly-owned by You or licensed to You on a fully paid-up basis and in a manner that will not require the payment of any fees, royalties and/or sums by Apple to You or any third party. In addition, if Your Application will be distributed outside of the United States, any master recordings and musical compositions embodied in Your Application (a) must not fall within the repertoire of any mechanical or performing/communication rights collecting or licensing organization now or in the future and (b) if licensed, must be exclusively licensed to You for Your Application by each applicable copyright owner.

3.3.11   If Your Application includes or will include any other content, You must either own all such content or have permission from the content owner to use it in Your Application.

3.3.12   Applications must not contain any obscene, pornographic, offensive or defamatory content or materials of any kind (text, graphics, images, photographs, etc.), or other content or materials that in Apple's reasonable judgment may be found objectionable by iPhone or iPod touch users.

3.3.13   Applications must not contain any malware, malicious or harmful code, program, or other internal component (e.g. computer viruses, trojan horses, "backdoors") which could damage, destroy, or adversely affect other software, firmware, hardware, data, systems, services, or networks.

3.3.14   If Your Application includes any FOSS, You agree to comply with all applicable

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FOSS licensing terms. You also agree not to use any FOSS in the development of Your Application in such a way that would cause the non-FOSS portions of the Apple Software to be subject to any FOSS licensing terms or obligations.

Cellular Network:

3.3.15   If an Application requires or will have access to the cellular network, then additionally such Application:

- Must comply with Apple's best practices and other guidelines on how Applications should access and use the cellular network;

- Must not in Apple's reasonable judgment excessively use or unduly burden network capacity or bandwidth;

- May not have Voice over Internet Protocol (VoIP) functionality.

4.   Changes to Program Requirements or Terms

Apple may change the Program Requirements or the terms of this Agreement at any time. New or modified Program Requirements will not retroactively apply to Licensed Applications already in distribution. In order to continue using the Apple Software, You must accept and agree to the new Program Requirements and/or new terms of this Agreement. If You do not agree to new Program Requirements or new terms, Your use of the Apple Software will be suspended or terminated by Apple. You agree that Your acceptance of such new Agreement terms or Program Requirements may be signified electronically, including without limitation, by Your checking a box or clicking on an "agree" or similar button.

5.   Digital Signing of Applications

All Applications must be signed with an Apple-issued certificate in order to be installed on Authorized Test Devices. During the Term of this Agreement, You may obtain development-related digital certificates from Apple, subject to a maximum number as reasonably determined by Apple, that will allow Your Application to be installed and tested on such Devices. You may also obtain, during the Term, one or more production digital certificates from Apple, subject to a maximum number as reasonably determined by Apple, to be used to sign Your Application(s) prior to submission to Apple.

In relation to this, You represent and warrant to Apple that: (a) You will not take any action to interfere with the normal operation of any Apple-issued digital certificates; (b) You are solely responsible for preventing any unauthorized person from having access to Your digital certificates and corresponding private keys and You will use best efforts to safeguard Your digital certificates and corresponding private keys from compromise; (c) You agree to immediately notify Apple in writing if You have any reason to believe there has been a compromise of any of Your digital certificates or corresponding private keys; (d) You will not provide or transfer Apple-issued digital certificates or provisioning profiles provided under this Program to any third party; and (e) You will use such Apple-issued certificates exclusively for the purpose of signing Your Applications for testing and/or submission to Apple under this Program, and only in accordance with this Agreement.

You further represent and warrant to Apple that the licensing terms governing Your Application, or governing any third party code or FOSS included in Your Application, will be consistent with and not conflict with the digital signing or content protection aspects of the Program or any of the terms, conditions or requirements of the Program or this Agreement. In particular, such licensing terms will not purport to require Apple (or its agents) to disclose or make available any of the keys, authorization codes, methods, procedures, data or other information related to the Security Solution, digital signing or digital rights management mechanisms utilized as part of the Program.

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If You discover any such inconsistency or conflict, You agree to immediately notify Apple of it and will cooperate with Apple to resolve such matter. Apple may immediately cease distribution of any affected Licensed Applications and refuse to accept any subsequent Application submissions from You until such matter is resolved to Apple's reasonable satisfaction.

6. Application Submission and Selection

6.1 Submission to Apple
You may submit Your Application for consideration by Apple for distribution once You decide that Your Application has been adequately tested and is complete. By submitting Your Application, You represent and warrant that Your Application complies with the Documentation and Program Requirements then in effect. You agree to cooperate with Apple in this process and to answer questions and provide information about Your submitted Application, as reasonably requested by Apple.

If You make any changes to an Application after it has been submitted to Apple, You must resubmit the Application. Similarly all bug fixes, updates, upgrades, modifications, enhancements, supplements to, revisions, new releases and new versions of Your Application must be submitted to Apple for review.

6.2 Selection by Apple for Distribution
You understand and agree that Apple may, in its sole discretion:
(a) determine that Your Application does not meet all or any part of the Documentation or Program Requirements then in effect;
(b) reject Your Application for distribution for any reason, even if Your Application meets the Documentation and Program Requirements; or
(c) select and digitally sign Your Application for distribution via the iTunes Store.

Apple shall not be responsible for any costs, expenses, damages, losses (including without limitation lost business opportunities or lost profits) or other liabilities You may incur as a result of Your Application development, use of this Apple Software, or participation in the Program, including without limitation the fact that Your Application may not qualify as a Licensed Application for distribution. You will be solely responsible for developing Applications that are safe, free of defects in design and operation, and comply with applicable laws and regulations. You will also be solely responsible for any documentation and end user customer support and warranty of your Applications. The fact that Apple may have reviewed, tested, approved or selected an Application will not relieve You of any of these responsibilities.

7. Distribution

Unless and until Your Application is selected by Apple as a Licensed Application, You agree not to distribute it to third parties or to enable or permit others to do so.

7.1 No Commercial Distribution Authorized Under this Agreement
If Your Application qualifies as a Licensed Application and You intend to charge end users a fee of any kind for Your Licensed Application, You must enter into a separate agreement with Apple and/or an Apple Subsidiary before any such commercial distribution of Your Licensed Application may take place via the iTunes Store.

7.2 Delivery of Freely Available Licensed Applications
If Your Application qualifies as a Licensed Application, it is eligible for delivery to end users by Apple and/or an Apple Subsidiary. If You would like Apple and/or an Apple Subsidiary to deliver Your Licensed Application to end users for free (no charge), then You appoint Apple and Apple Subsidiaries as your exclusive legal agent pursuant to the terms of Schedule 1, for Licensed Applications designated by You as free of charge applications. Licensed Applications delivered by Apple and/or an Apple Subsidiary that are paid for by an end user will require You to enter into a separate agreement with, and provided by, Apple.

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8. Revocation

You understand and agree that Apple may cease distribution of Your Licensed Application(s) and/or Licensed Application Information or revoke the digital certificate of any of Your Licensed Applications at any time. By way of example only, Apple might choose to do this if at any time:
(a) Any of Your digital certificates or corresponding private keys has been compromised or Apple has reason to believe that either has been compromised;
(b) Apple has been notified or otherwise has reason to believe that Your Licensed Application violates, misappropriates, or infringes the rights of a third party or of Apple;
(c) Apple has reason to believe that Your Licensed Application contains malicious or harmful code, malware, programs or other internal components (e.g. software virus);
(d) Apple has reason to believe that Your Licensed Application damages, corrupts, degrades, destroys or otherwise adversely affects the devices it operates on, or any other software, firmware, hardware, data, systems, or networks accessed or used by the Licensed Application;
(e) You breach any term or condition of this Agreement or the Registered iPhone Developer terms and conditions;
(f) Any information or documents provided by You to Apple for the purpose of verifying your identity or obtaining Apple-issued digital certificates is false or inaccurate;
(g) Any representation, warranty or certification provided by You to Apple in this Agreement is untrue or inaccurate;
(h) Apple is required by law, regulation or other governmental or court order to take such action;
(i) You request that Apple take such action in accordance with Schedule 1; or
(j) Apple has reason to believe that such action is prudent or necessary.

9. Program Fees

As consideration for the rights and licenses granted to You under this Agreement and Your participation in the Program, You agree to pay Apple the requisite annual program fees. The fees are non-refundable. Any taxes that may be levied on the Apple Software or Your use of it shall be Your responsibility. Your program fees must be paid up and not in arrears at the time You submit (or resubmit) Applications to Apple under this Agreement.

10. Confidentiality

10.1 Information Deemed Confidential
You agree that the Apple Software licensed hereunder, the terms and conditions of this Agreement, and any other non-public information that You learn about Apple's products, designs, research, development, know-how, or Apple's business, finances or personnel, or non-public third party information, in connection with this Agreement or in connection with Your use of any part of the Apple Software will be deemed "Apple Confidential Information" under this Agreement.

10.2 Information Not Deemed Confidential
Apple works with many application and software developers and some of their products may be similar to or compete with Your Applications. Apple may also be developing its own similar or competing applications and products or may decide to do so in the future. To avoid potential misunderstandings, Apple cannot agree, and expressly disclaims, any confidentiality obligations or use restrictions, express or implied, with respect to any information that You may provide in connection with this Agreement or the Program, including information about Your Application or other unreleased products, Licensed Application Information and metadata (such disclosures will be referred to as "Licensee Disclosures"). You agree that any Licensee Disclosures will be **non-confidential** even if You have entered into a separate confidentiality agreement with Apple. Apple will be free to use and disclose any Licensee Disclosures on an unrestricted basis without notifying or compensating You. You release Apple from all liability and obligations that may arise from the receipt, review, use, or disclosure of any portion of any Licensee Disclosures. Any physical materials You submit to Apple will become Apple property and Apple will have no obligation to return those materials to You or to certify their destruction.

Information that otherwise would be deemed Confidential Information but (i)   is generally available to the public through no fault or breach of the recipient, (ii)   is independently developed by the

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recipient without the use of any of the other party's Confidential Information, (iii) was rightfully obtained from a third party who had the right to transfer or disclose it to the recipient without limitation, or (iv) any FOSS included in the Apple Software and accompanied by licensing terms that do not impose confidentiality obligations on the use or disclosure of such FOSS will not be deemed Confidential Information under this Agreement.

10.3   Obligations Regarding Confidential Information
You agree to protect Apple Confidential Information using at least the same degree of care that You use to protect Your own confidential information of similar importance, but no less than a reasonable degree of care. You agree to use Apple Confidential Information solely for the purpose of exercising Your rights and performing Your obligations under this Agreement and agree not to use Apple Confidential Information for any other purpose, or for Your own or any third party's benefit, without the express prior written consent of an authorized representative of Apple. You further agree not to disclose or disseminate Apple Confidential Information to anyone, or to discuss anything about the Apple Confidential Information with anyone, other than those of Your employees and contractors who have a need to know and who are bound by a written agreement that prohibits unauthorized use or disclosure of the Confidential Information. You may disclose Apple Confidential Information to the extent required by law, provided that You take reasonable steps to notify Apple of such requirement before disclosing the Apple Confidential Information and to obtain protective treatment of the Apple Confidential Information. You acknowledge that damages for improper disclosure of Apple Confidential Information may be irreparable; therefore, Apple is entitled to seek equitable relief, including injunction and preliminary injunction, in addition to all other remedies.

10.4   Press Releases and Other Publicity
You may not issue any press releases or make any other public statements regarding this Agreement, its subject matter, or the relationship of the parties without Apple's express prior written approval, which may be withheld at Apple's discretion.

11.   Indemnification

You agree to indemnify, defend and hold harmless Apple, its directors, officers, employees, independent contractors and agents (each an "Apple Indemnified Party") from any and all claims, losses, liabilities, damages, expenses and costs (including without limitation attorneys fees and court costs) (collectively "Losses") incurred by an Apple Indemnified Party as a result of Your breach of this Agreement, a breach of any certification, covenant, representation or warranty made by You in this Agreement, any claims that Your Applications, Licensed Application Information or metadata violate or infringe any third party intellectual property or proprietary rights, and/or otherwise related to or arising from Your use of the Apple Software, Your Application(s), Licensed Application Information, metadata, Authorized Test Devices, or Your development of Applications.

You acknowledge that the Apple Software is not intended for use in the development of Applications in which errors or inaccuracies in the content, data or information provided by the Application or the failure of the Application, could lead to death, personal injury, or severe physical or environmental damage, and You hereby agree to indemnify, defend and hold harmless each Apple Indemnified Party from any Losses incurred by such Apple Indemnified Party by reason of any such use.

In no event may You enter into any settlement or like agreement with a third party that affects Apple's rights or binds Apple in any way, without the prior written consent of Apple.

12.   Term and Termination

12.1   Term
The Term of this Agreement shall commence on the date You first accept this Agreement (the "Effective Date") and extend for an initial period of one (1) year following the payment date of Your Program fee to Apple. Thereafter, subject to Your payment of annual renewal fees and compliance with the terms of this Agreement, the Term will automatically renew for successive one (1) year terms, unless sooner terminated in accordance with this Agreement.

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12.2   Termination

This Agreement and all rights and licenses granted by Apple hereunder will terminate, effective immediately upon notice from Apple:

(a) if You or any of Your Authorized Users fail to comply with any term of this Agreement other than those contained in Section 10 (Confidentiality) and fail to cure such breach within 30 days after becoming aware of or receiving notice of such breach;

(b) if You or any of Your Authorized Users fail to comply with the terms of Section 10;

(c) in the event of the circumstances described in the subsection entitled "Severability" below;

(d) if You, at any time during the Term, commence an action for patent infringement against Apple; or

(e) if You become insolvent, fail to pay Your debts when due, dissolve or cease to do business, file for bankruptcy, or have filed against You a petition in bankruptcy.

Apple may also terminate this Agreement, or suspend Your rights to use the Apple Software, if You fail to accept any new Program Requirements or Agreement terms as described in Section 4.

Either party may terminate this Agreement for its convenience, for any reason or no reason, effective 30 days after providing the other party with written notice of its intent to terminate.

12.3   Effect of Termination

Upon the termination of this Agreement for any reason, You agree to immediately cease all use of the Apple Software and erase and destroy all copies, full or partial, of the Apple Software and all copies of Apple Confidential Information in Your and Your Authorized Users' possession or control. At Apple's request, You agree to provide written certification of such destruction to Apple. Upon the expiration of the Delivery Period defined and set forth in Schedule 1, all Licensed Applications and Licensed Application Information in Apple's possession or control shall be deleted or destroyed within a reasonable time thereafter, excluding any archival copies maintained in accordance with Apple's standard business practices or required to be maintained by applicable law, rule or regulation. The provisions of Sections 1, 2.5, 2.6, 3.1(d), 3.1(e), 3.1(f), 3.2(d), 3.2(e), 3.2(f), 3.3, 5 (second and third paragraphs), 6.1, 6.2, 7 (Schedule 1 for the Delivery Period), 8, and 10 through 15 inclusive will survive any termination of this Agreement. Apple will not be liable for compensation, indemnity, or damages of any sort as a result of terminating this Agreement in accordance with its terms, and termination of this Agreement will be without prejudice to any other right or remedy Apple may have, now or in the future.

13.   NO WARRANTY

The Apple Software is pre-release software. The Apple Software may contain inaccuracies or errors that could cause failures or loss of data and it may be incomplete. Apple may provide or make available through the Apple Software or as part of the Program, certain web-based applications, certificate-issuance services, iTunes Store services or other services for Your use (collectively the "Services"). Apple and its licensors reserve the right to change, suspend, remove, or disable access to any Services at any time without notice. In no event will Apple be liable for the removal of or disabling of access to any such Services. Apple may also impose limits on the use of or access to certain Services, in any case and without notice or liability. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE APPLE SOFTWARE, SECURITY SOLUTION AND SERVICES IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. THE APPLE SOFTWARE, SECURITY SOLUTION AND SERVICES ARE PROVIDED "AS IS", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND APPLE, APPLE'S AGENTS AND APPLE'S LICENSORS (COLLECTIVELY REFERRED TO AS "APPLE" FOR THE PURPOSES OF SECTIONS 13 AND 14) HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE APPLE SOFTWARE, SECURITY SOLUTION AND SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, TIMELINESS, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. APPLE DOES NOT

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14.   LIMITATION OF LIABILITY

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL APPLE BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO THIS AGREEMENT, YOUR USE OR INABILITY TO USE THE   APPLE SOFTWARE, SECURITY SOLUTION OR SERVICES , OR YOUR DEVELOPMENT EFFORTS OR PARTICIPATION IN THE PROGRAM, HOWEVER CAUSED, WHETHER UNDER A THEORY OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCTS LIABILITY, OR OTHERWISE, EVEN IF APPLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. IN NO EVENT SHALL APPLE'S TOTAL LIABILITY TO YOU UNDER THIS AGREEMENT FOR ALL DAMAGES (OTHER THAN AS MAY BE REQUIRED BY APPLICABLE LAW IN CASES INVOLVING PERSONAL INJURY) EXCEED THE AMOUNT OF FIFTY DOLLARS ($50.00).

15.   General Legal Terms

15.1   Third Party Notices. Portions of the Apple Software utilize or include third party software and other copyrighted material. Acknowledgements, licensing terms and disclaimers for such material are contained in the electronic documentation for the Apple Software, and Your use of such material is governed by their respective terms.

15.2   Consent to Collection and Use of Non-Personal Data.   You agree that Apple and its subsidiaries may collect and use technical and related information, including but not limited to technical information about Your Applications, computer, system software, other software and peripherals, that is gathered periodically to facilitate the provision of software updates and other services to You (if any) related to the Apple Software, and to verify compliance with the terms of this Agreement. Apple may use this information, as long as it is in a form that does not personally identify You, to improve the Apple Software, our products or to provide services or technologies to You and our customers.

15.3   Assignment. This Agreement may not be assigned, nor may any of Your obligations under this Agreement be delegated, in whole or in part, by You by operation of law, merger, or any other means without Apple's express prior written consent and any attempted assignment without such consent will be null and void.

15.4   Relationship of Parties.   Except for the agency appointment as specifically set forth in

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Schedule 1, this Agreement will not be construed as creating any other agency relationship, or a partnership, joint venture, fiduciary duty, or any other form of legal association between You and Apple, and You will not represent to the contrary, whether expressly, by implication, appearance or otherwise. This Agreement is not for the benefit of any third parties.

15.5   Independent Development.   Nothing in this Agreement will impair Apple's right to develop, acquire, license, market, promote, or distribute products or technologies that perform the same or similar functions as, or otherwise compete with, Applications, Licensed Applications or any other products or technologies that You may develop, produce, market, or distribute.

15.6   Notices.   Any notices relating to this Agreement shall be in writing. Notices will be deemed given by Apple when sent to You at the email address or mailing address You provided during the sign-up process. Except for withdrawal notices to Apple given under Schedule 1, all other notices to Apple relating to this Agreement will be deemed given (a) when delivered personally, (b) three business days after having been sent by commercial overnight carrier with written proof of delivery, and (c) five business days after having been sent by first class or certified mail, postage prepaid, to this Apple address: iPhone Developer Program Licensing, Apple Inc., 12545 Riata Vista Circle, MS 198-3SW, Austin, TX 78727, U.S.A.
You consent to receive notices by email and agree that any such notices that Apple sends You electronically will satisfy any legal communication requirements. A party may change its email or mailing address by giving the other written notice as described above.

15.7   Severability. If a court of competent jurisdiction finds any clause of this Agreement to be unenforceable for any reason, that clause of this Agreement shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement shall continue if full force and effect. However, if applicable law prohibits or restricts You from fully and specifically complying with, or appointing Apple and Apple Subsidiaries as Your agent under, Schedule 1 or the Sections of this Agreement entitled "Internal Use License and Restrictions" or "Your Obligations", or prevents the enforceability of either of those Sections or Schedule 1, this Agreement will immediately terminate and You must immediately discontinue any use of the Apple Software as described in the Section entitled "Term and Termination."

15.8   Waiver and Construction.   Failure by Apple to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision. Any laws or regulations that provide that the language of a contract will be construed against the drafter will not apply to this Agreement. Section headings are for convenience only and are not to be considered in construing or interpreting this Agreement.

15.9   Export Control. You may not use, export, re-export, import, sell or transfer the Apple Software except as authorized by United States law, the laws of the jurisdiction in which You obtained the Apple Software, and any other applicable laws and regulations. In particular, but without limitation, the Apple Software may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Apple Software, You represent and warrant that You are not located in any such country or on any such list. You also agree that You will not use the Apple Software for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of nuclear, missiles, or chemical or biological weapons. You certify that this pre-release Apple Software will only be used for development and testing purposes, and will not be rented, sold, leased, sublicensed, assigned, or otherwise transferred. Further, You certify that You will not transfer or export any product, process or service that is a direct product of this pre-release Apple Software .

15.10   Government End Users. The Apple Software and Documentation are "Commercial Items", as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48

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C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.

15.11   Dispute Resolution. Any litigation or other dispute resolution between You and Apple arising out of or relating to this Agreement, the Apple Software, or Your relationship with Apple will take place in the Northern District of California, and You and Apple hereby consent to the personal jurisdiction of and exclusive venue in the state and federal courts within that District with respect any such litigation or dispute resolution. This Agreement will be governed by and construed in accordance with the laws of the United States and the State of California, except that body of California law concerning conflicts of law. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

15.12   Entire Agreement; Governing Language. This Agreement constitutes the entire agreement between the parties with respect to the use of the Apple Software licensed hereunder and supersedes all prior understandings and agreements regarding its subject matter, including the iPhone SDK Agreement (clickwrap) accompanying the SDK. This Agreement may be modified only: (a) by a written amendment signed by both parties, or (b) to the extent expressly permitted by this Agreement (for example, by Apple by written or email notice to You). Any translation of this Agreement is done for local requirements and in the event of a dispute between the English and any non-English version, the English version of this Agreement shall govern.

If You are located in the province of Quebec, Canada, the following clause applies: The parties hereby confirm that they have requested that this Agreement and all related documents be drafted in English. Les parties ont exig é que le présent contrat et tous les documents connexes soient rédigés en anglais.

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Schedule 1

1.   Appointment of Exclusive Agent

You hereby appoint Apple and Apple Subsidiaries, collectively "Apple" in this Schedule 1, as Your exclusive worldwide legal agent for the delivery of Your Licensed Applications to end users for free during the Delivery Period. Accordingly, You permit and instruct Apple to:

> 1.1   market, solicit and obtain orders for Licensed Applications from anywhere in the world on Your behalf;
>> 1.2   make copies of, format, and otherwise prepare Licensed Applications for delivery, including by adding the Security Solution;
>> 1.3   electronically fulfill and deliver Licensed Applications, Licensed Application Information, and associated metadata to end users via the iTunes Store;
>> 1.4   use (i) screen shots of Your Licensed Application, (ii) trademarks associated with Your Licensed Application, and (iii) Licensed Application Information, in marketing materials and gift cards; and
>> 1.5   otherwise use Licensed Applications, Licensed Application Information and associated metadata as may be reasonably necessary in furtherance of its appointment.

Apple owes no payment to You in relation to Apple's appointment as your agent for the delivery of Your Licensed Applications for free to end users. However, You reserve the right to vary the price of Your Licensed Applications. If You intend to charge end users a fee for Your Licensed

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Application, then You must enter into a separate agreement with Apple regarding the delivery of such Licensed Application.

Apple may not use Licensed Applications or Licensed Application Information in any manner not permitted in this Agreement. You agree that Apple reserves the right to stop taking orders and delivering any of Your Licensed Application(s) and/or Licensed Application Information at any time, with or without cause and with or without prior notice.

"Delivery Period" means the period beginning on the Effective Date of the Agreement and expiring on the last day of the Agreement, provided, however, that Apple's appointment as agent shall survive such expiration for a reasonable phase-out period not to exceed ten (10) business days.

2.   Delivery
You agree to deliver to Apple, at Your expense, Your Licensed Applications, Licensed Application Information and associated metadata in a format as may be reasonably requested by Apple in furtherance of its appointment. Such metadata may include information such as the title and version number of Your Licensed Application, the territories in which You desire to deliver Your Licensed Application, any copyright notices, and any end user licensing terms ("EULA") for Your Licensed Applications.

Licensed Applications will be delivered to Apple using software tools, a secure FTP site address, or other delivery methods as may be reasonably requested by Apple in furtherance of its appointment as your agent. All Licensed Applications and related materials intended for distribution in the United States and Canada, including their respective territories and possessions, will be electronically delivered to a server in California or via "load & leave" per California regulation 1502.

3.   Ownership, Control and End User Licensing
No ownership interest in Your Licensed Applications and Licensed Application Information will transfer to Apple, and any risk of loss, title and/or control of Your Licensed Applications will remain with You.

You agree that Apple is not responsible for, and assumes no liability in relation to, any Licensed Application or the installation for use of the Licensed Application by any end user. Apple shall have no obligation or responsibility for providing any end user assistance, warranty or support for any Licensed Application. Any agreement with the end user regarding Your Licensed Application shall be solely between You and the end user.

You reserve the right to provide Your own EULA for Licensed Applications at the same time You deliver Your Licensed Application to Apple. End users will be given the opportunity to review Your EULA on the iTunes Store. If You do not provide a EULA, You agree that the terms of the iTunes Store Terms of Service, as such terms may be changed by Apple from time to time, will apply between You and the end user as if entered directly between You and such end user. Apple will not be responsible to You for end user violations of Your EULA or violations of the iTunes Store Terms of Service.

4.   Reservation to Withdraw
If You no longer have the necessary rights to make this appointment in relation to any of Your Licensed Applications, then You will provide notice to Apple at appleproducer@apple.com and Apple shall stop taking orders and delivering such Licensed Application within three (3) business days of receipt of Your notice. Your notice will not relieve You from any liability arising from Your breach of this Agreement, any Apple loss or liability arising from Apple's appointment, or any obligations you may have to any end users of the Licensed Applications.

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